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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

6 OPTUMHEALTH CARE SOLUTIONS, INC.,

No. 15CV08658

Plaintiff,

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v.

AFFIDAVIT OF JOSEPH A. DOUGHER

10 STATE OF OREGON, by and through
11 OREGON HEALTH AUTHORITY; and
12 APS HEALTHCARE QUALITY REVIEW,
13 INC., a Delaware corporation,

12 Defendants.

13

14 COMMONWEALTH OF PENNSYLVANIA

15 County of DAUPHIN

16 I, JOSEPH A. DOUGHER, being first duly sworn, do depose and say:

17 1. I am the President and Chief Executive Officer of KEPRO, Inc., which

18 acquired APS Healthcare Quality Review, Inc. (“APS”) from Universal American in 2015. I
19 make this affidavit based on personal knowledge and the records of APS, which were created
20 and maintained in the ordinary course of its business. I am competent to testify to the matters
21 stated herein.

22 2. On or about June 1, 2009, an APS-affiliated entity, Innovative Resource

23 Group, LLC, dba APS Healthcare Midwest entered into a Personal/Professional Services

24 Contract, Contract Number 127718 (“Contract 127718”) with the State of Oregon, acting by
25 and through its Department of Human Services (“DHS”), and later, through amendment, the

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1 Oregon Health Authority (“OHA”), for the provision of fee-for-service (“FFS”) healthcare
2 services to members of the Oregon Health Plan (“OHP”).

3 3. On November 5, 2014, OHA issued a Request for Proposal for Oregon Health
4 Plan Fee-for-Service Member Statewide Care Coordination Program, RFP #3882 (the
5 “RFP”), requesting proposals from qualified proposers to provide a statewide program of
6 care coordination services for the OHP FFS members with or without Medicare. The RFP
7 sought proposals for a new contract that would cover the services being provided by APS
8 under Contract 127718 as well as certain additional services not covered by the then-existing
9 contract. The RFP stated that OHA expected the contract to be awarded pursuant to the RFP
10 to become effective April 1, 2015. At the time that the RFP was issued, Contract 127718
11 was scheduled to terminate on March 31, 2015.

12 4. On March 4, 2015, OHA issued its Revised Notice of Intent to Award the RFP
13 to APS (the “Revised Notice”).

14 5. APS and OHA agreed to extend the termination date of Contract 127718
15 several times in 2015. By the end of March, APS and OHA had not had a reasonable
16 opportunity to negotiate the terms of a new contract consistent with APS’ proposal in
17 response to the RFP. APS and OHA therefore extended the termination deadline for
18 Contract 127718 from March 31 to June 30. By mid-June, OptumHealth Care Solutions, Inc.
19 (“Optum”) had filed this action, OHA and APS each had filed motions seeking dismissal of
20 Optum’s claims, and the parties still had not negotiated the terms of the new contract.
21 Because OHA’s and APS’ motions seeking dismissal of Optum’s claims was scheduled to be
22 heard on July 16, and there was a possibility that the motions would resolve the litigation on
23 or around that date, APS agreed to another extension of the termination date for Contract
24 127718, to August 31.

25 6. However, following the Court’s July 19 ruling on the motions to dismiss
26 Optum’s claims, it became evident that this proceeding would not be fully resolved by

1 August 31. APS concluded that any additional short-term extensions of Contract 127718 was
2 and is not reasonable from a business perspective and that the uncertainty associated with the
3 lack of a long-term contractual commitment with OHA could jeopardize APS' ability to
4 continue to provide FFS services to OHP members. By letter dated August 12, 2015, APS
5 formally notified OHA of APS' reluctance to enter into additional short-term extensions of
6 Contract 127718. A true and correct copy of my letter to OHA's Rhonda Busek is attached
7 as Exhibit 1.

8 7. From APS' perspective, additional short-term extensions of Contract 127718
9 was not reasonable for the following reasons:

10 a. Typically, APS enters into long-term leases (3-5 year commitments)
11 for the facilities it rents to conduct its business operations. On August 1, 2014, the
12 long-term lease for the building in which APS conducts its business operations
13 pursuant to its contract with OHA converted into a month-to-month tenancy. APS
14 intended to operate pursuant to a month-to-month lease for only a few months during
15 the RFP process, and then, if APS was the successful proposer, it would renegotiate
16 another long-term lease. However, APS now has been operating on a month-to-
17 month lease for more than a year. Under the month-to-month tenancy, APS' landlord
18 may terminate the lease with 30 days' notice. APS' landlord has indicated that,
19 without a long-term commitment from APS, APS' short-term lease may be
20 terminated. On multiple occasions, the landlord has asked APS about its long-term
21 plans and has indicated that the landlord may begin showing the leased space to other
22 potential tenants if APS does not enter into a long-term lease. If the landlord
23 terminates the lease, APS would be forced to shut down all of its operations. This, in
24 turn, would cause an interruption in APS' ability to perform the FFS services it is
25 obligated to provide to OHP members pursuant to its contract with OHA. Moreover,
26 APS' current rent (month-to-month) is higher than it would be if APS could commit

1 to a long-term lease, which it could do with a long-term contractual commitment from
2 OHA. APS advised OHA of these issues concerning the building lease—and the
3 potential that the lease could be terminated on short notice—shortly after the lease
4 converted into a month-to-month tenancy.

5 b. The uncertainty about the status of APS' contract with OHA also has
6 negatively impacted APS' relationship with its staff. For example, APS has been
7 unable to guarantee its nurses long-term employment without a long-term contract
8 with OHA, which has led to an abnormal increase in staff turnover. In the last year,
9 the turnover rate increased from 5% to 35%. APS' costs to recruit and train a new
10 employee ranges from approximately \$7,000 to \$15,000, but most importantly, there
11 is a loss of productivity, substantive knowledge and continuity of care that results
12 from employee turnover. Employee morale also has been negatively impacted as
13 well.

14 c. In addition to paying increased rent, APS was incurring additional
15 costs (estimated to be approximately \$10,000 on an annual basis) because it did not
16 have a long-term contract with OHA. For example, APS could not buy supplies in
17 bulk (such as supplies for bulk mailing, which it uses in providing services under
18 Contract 127718) and instead had to purchase smaller quantity fulfillments, which
19 results in increased expenses for APS.

20 d. APS is concerned that the OHP members may be less satisfied with
21 APS' services—and thus be less inclined to seek health care services—because of the
22 lack of a long-term contract with OHA. That would directly undermine the purpose
23 of providing coordinated care to this vulnerable population.

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1 8. Further extensions of Contract 127718 also would have been disadvantageous
2 to OHP members because that contract does not cover all of the services that APS offered to
3 provide in its proposal to the RFP—and that APS will provide under its new contract with
4 OHA, Contract 149285, which APS and OHA executed on August 31, 2015.

5 a. For example, under Contract 149285, APS will provide behavioral and
6 dental services, which were not provided to OHP members pursuant to Contract
7 127718. Moreover, APS will utilize a number of enhanced systems and programs
8 that will improve the overall provision of health care services to OHP members.

9 b. APS will utilize the Patient Activation Measure (“PAM”), which is a
10 tool designed to methodically assess individual Medicaid members’ knowledge, skill
11 and confidence in managing their own health and healthcare; healthcare organizations
12 can then use PAM scores to predict health behaviors, with the goal of reducing the
13 overall healthcare costs for Medicaid members. APS also will improve and expand
14 its website activities, apply Televox enhancements (thereby significantly improving
15 telephone communications with Medicaid members concerning their appointments,
16 post-visit matters and ongoing engagement) and enhanced field based staffing model
17 (including additional face-to-face interactions).

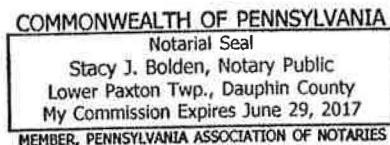
18 c. APS also will use PreManage, which is a system designed to give real-
19 time notifications about hospital events (such as emergency room visits or admittance
20 to the hospital) about patients to an organization responsible for care management and
21 care coordination of those patients. In other words, APS will receive real-time
22 information each time one of the Medicaid members whose care APS oversees is
23 admitted to the hospital or emergency room. This system is vastly superior to the
24 current system, which requires the organization (i.e. APS) to wait for claims
25 information to be sent via a file and necessarily results in a time-delay.

26

1 d. Now that Contract 149285 has been executed, APS will be able to
2 deliver all of these services to OHP members.


Joseph A. Dougher

6 SUBSCRIBED AND SWORN to before me this 9th day of September, 2015.



Notary Public for Dauphin County, PA
My Commission Expires: 6/29/2017



August 12, 2015

VIA OVERNIGHT MAIL

Rhonda Busek
500 Summer Street NE, E-20
Salem, OR 97301

Re: APS Healthcare Quality Review, Inc.; State of Oregon Personal/Professional Services Contract; Contract Number 127718

Dear Ms. Busek:

As you know, Innovative Resource Group, LLC d.b.a. APS Healthcare Midwest (and related to APS Healthcare Quality Review, Inc.) ("APS") and Oregon Health Authority ("OHA") are parties to the Personal/Professional Services Contract, Contract Number 127718 ("Current Contract"), for the provision of fee-for-service healthcare services to OHP members. As you also know, OHA has issued a Notice of Intent to Award the contract to APS as the highest ranked, responsive and responsible proposer to OHA's Request for Proposals for Oregon Health Plan Fee-for-Service Member Statewide Care Coordination Program, RFP #3882 (the "RFP").

The expiration date for the Current Contract has been amended five times since mid-2014, and most recently it was extended from June 30, 2015 to August 31, 2015. We are writing to advise you that APS cannot continue with additional short-term extensions to the Current Contract. APS has incurred, and will continue to incur, significant and unnecessary expenses due to the uncertainty of not having a long-term contract with OHA, which is negatively impacting APS' business, and there is a serious risk that uncertainty will adversely affect the provision of services to enrolled members.

Here is a summary of some of the negative impacts that APS is suffering due to the lack of a long-term contractual commitment:

1. Rent. Due to the uncertainty concerning the new contract with OHA, APS could not commit to a long-term lease for the facility that it rents in Salem. Consequently, APS' lease converted to month-to-month, and APS' current rent is higher than it would be with a long-term lease. Moreover, the landlord has advised APS that it may terminate the month-to-month option at any time, which potentially could cause a shutdown of all operations (IT servers, offices, phones, etc.).

2. Staff. APS recently has experienced turnover in its nursing staff because APS cannot guarantee its nurses long-term employment without a committed long-term contract with OHA. This trend will only increase over time and may further jeopardize APS' relationship with its established, full-time RNs. Similarly, it is unreasonable for APS to engage in significant hiring of full-time replacement staff given the uncertainty of the contractual commitment. The uncertainty has led to an adverse impact on employee morale as well.

3. Supplies. It is difficult for APS to order supplies (such as those needed for bulk mailings) and obtain fulfillments because it can order only for the short-term instead of making bulk purchases. This also causes APS to pay more for those supplies, which is not an insignificant expense.

4. Gap in Services. The Current Contract does not cover all of the services that APS offered to provide OHP members in its proposal to the RFP. Until the contract associated with the RFP is executed, APS cannot provide those additional services. Those services include the following: (1) behavioral and dental services; (2) Patient Activation Measure to improve engagement rates; (3) improved website activities; (4) Televox enhancements designed to drive increased engagement; (5) enhanced field based staffing model, including additional face to face interactions to drive improved clinical outcomes; and (6) use of EDIE and PreManage.

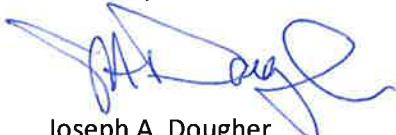
5. Potential Adverse Impact to High Client Satisfaction Scores. Based on independent surveys taken in the past two years, more than 93% of clients have responded that they are “satisfied” or “highly satisfied” with APS’ services. Further delay in finalizing a long-term contract could adversely impact these scores.

In addition to the foregoing, APS notes that, without a long-term contract, the State of Oregon is not recognizing the benefits that the contract to be awarded under the RFP is expected to provide. In addition to the additional services that will be provided under the new contract, as discussed above, the State also stands to save significant fees based on a lower PMPM as a merging of the FFS Open Card population and the Dual eligible population. For example, based on the proposed pricing and assuming a population of 116,000 clients, the State would save approximately \$80,780/month, \$969,360/year and \$4,846,8000 over the course of five years. These savings represent a 14% reduction with enhanced services. Moreover, for the past five years of APS’ service, the return on investment has been 3.1 to 1. These savings may be lost if the uncertainty concerning a long-term contract continues.

For these reasons, it is not reasonable for APS and OHA to continue with further short-term extensions of the Current Contract.

Please feel to contact me if you have any questions or would like to discuss this further.

Sincerely,



Joseph A. Dougher
President and CEO

cc: Stacy Posegate (*via email*)
Stephen Schlager
Reilley D. Keating
Amy Edwards

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **AFFIDAVIT OF JOSEPH A.**

DOUGHER on the following named person(s) on the date indicated below by:

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery
- email
- notice of electronic filing via the Odyssey File and Serve system

to said person(s) a true copy thereof, contained in a sealed envelope, if by mail, addressed to
said person(s) at his or her last-known address(es) indicated below.

Stacy C. Posegate
Seth T. Karpinski
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DATED: September 9, 2015.

STOEL RIVES LLP

s/ Amy Edwards
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